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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 STEVEN KINFORD,

11 Plaintiff,

12 vs.

13 JAMES PINCOCK et al.,
14 Defendants.

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3:15-cv-00512-RCJ-WGC

16 **ORDER**
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Plaintiff sued Defendants in state court alleging Eighth Amendment violations and negligence under state law based on allegedly defective facial reconstruction surgery.

Defendants removed. The Court granted Defendants' motion to dismiss at the recommendation of the Magistrate Judge. The Magistrate Judge had recommended dismissal of the action with prejudice but also recommended keeping the case open to give Plaintiff an opportunity to amend to make allegations of unlawful retaliation against two new defendants. The Court nominally adopted the recommendation in full but in substance rejected it in part, ordering the Clerk to close the case.

1 After filing a notice of appeal, Plaintiff asked the Court to clarify the procedural posture
2 of the case. The Court interpreted the motion as a motion for relief from judgment under Rule
3 60(a). The Court had lost jurisdiction to the Court of Appeals, however, and could only make an
4 indicative ruling under Rule 62.1. The Court indicated that if the Court of Appeals were to
5 remand for the purpose of ruling on the motion, the Court would rule that it made an oversight as
6 contemplated under Rule 60(a) when it dismissed without leave to amend to make allegations of
7 unlawful retaliation against the two proposed defendants. The Court of Appeals has now so
8 remanded, and the Court now so rules.
9

10 CONCLUSION

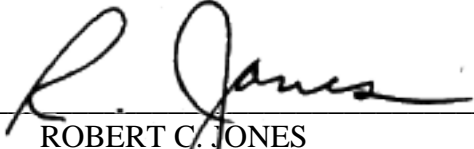
11 IT IS HEREBY ORDERED that the Motion for Relief from Judgment (ECF No. 51) and
12 the Motion to File Amended Complaint (ECF No. 56) are GRANTED.
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14 IT IS FURTHER ORDERED that the Clerk shall DETACH and FILE the Third
15 Amended Complaint (ECF No. 56-1), and the Magistrate Judge shall PREPARE a report and
16 recommendation under 28 U.S.C. § 1915A in the ordinary course.
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18 IT IS FURTHER ORDERED that the Motion for Appointment of Counsel (ECF No. 55)
19 is DENIED.

20 IT IS SO ORDERED.

21 Dated this 12th day of April, 2017.
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25 ROBERT C. JONES
26 United States District Judge
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